

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4357 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHITAL JAYENDRABHAI PATEL THROUGH GUARDIAN HB PATEL

Versus

GUJARAT UNIVERSITY

Appearance:

MR PJ PATEL for Petitioner

MR DS NANAVATI for Respondent No. 1

SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/07/97

ORAL JUDGEMENT

The petitioner seeks a direction on the respondent University to accept his admission form for the course of Master of Business Administration and consider his case for the purpose of granting admission to the MBA Five Years' (Full Time) Integrated Course in K.S. School of Business Management of the Gujarat

University. The grievance of the petitioner is that his admission form was returned to him on the ground that he was not eligible merely because he had passed his 10th Standard Examination in March/April, 1993 and not in 1995.

Relying upon the decision of this High Court in *Nirish Shah Vs. Ahmedabad Municipal Corporation and ors.*, reported in 37 (3) GLR 438, it was strongly contended on behalf of the petitioner that the ground on which the petitioner's admission form was returned, was irrational and arbitrary and the classification of those who have passed the 10th Standard Examination held in March/April, 1995 and others who had passed earlier, was irrational and arbitrary and there was no reasonable nexus between the said classification and the object sought to be achieved by the eligibility guideline of the University.

The petitioner had passed SSC (10th Standard) Examination in June, 1993. He however, did not pursue further studies of 11th Standard, but instead joined a Technical Diploma Course of Wireless, Radio Servicing etc. After completion of that course, he pursued his studies of 11th Standard and thereafter, 12th Standard i.e. Higher Secondary School Examination and passed the same in 1997 with good marks.

The respondent No.2 had given an advertisement for admission to the MBA Course conducted by it and as per the eligibility criteria announced in that advertisement, the student was required to have passed the SSC (10th Standard) Examination in May/June, 1995 at the first attempt. HSC (12th Standard) Examination in May/June, 1997 at the first attempt. The admission was to be given to 90 seats, which included the reserved seats, strictly on merits. The petitioner's case is that this requirement of continuity envisaged in the advertisement for the purpose of eligibility, is irrational especially when for the purpose of admission only the marks obtained at the HSC were required to be considered.

The Integrated Course of Five Years' for the degree of Master of Business Administration, announced by the University in its prospectus lays down the eligibility criteria for joining the said course. The decision of the Gujarat University to launch the Five Years' Integrated MBA Course appears to have been taken with a view to answer a long felt need for improvement in the field of business management and to meet with the

growing demands for highly qualified professionals in the field of management. As per the eligibility criteria provided in Clause (4) of the Prospectus, a candidate must have passed Gujarat S.S.C (10th Standard) Examination or equivalent examination in June, 1995 at first attempt and he must have further passed Gujarat H.S.C (12th Standard) Examination in the General or Science Stream, in June, 1997 at the first attempt. Then there is also eligibility criteria of minimum qualifying marks required for admission prescribed in Clause (5) with which we are not concerned in this petition. Merit lists are to be prepared as provided in Clause (6) of the Prospectus.

It is evident from the eligibility criteria laid down by the University for admission to the said Course for the year 1997-98 that the petitioner was not eligible, inasmuch as he had passed the SSC (10th Standard) Examination in June, 1993 and not in June, 1995. It appears that after having passed SSC (10th Standard) Examination in 1993, there was a break of two years before he pursued his studies for the 11th Standard and 12th Standard. The question is whether the requirement of the rule regarding continuity of studies in the 10th and 12th Standard Examination can be said to be irrational. It is clear that the students who continued their studies without a break and passed their examinations at the first attempt in 10th and 12th Standard Examinations would, in the context of pursuing such further courses, stand on a different footing than those who have after passing their 10th Standard Examination deviated and not pursued the course for the 12th Standard Examination. The students who had passed the 10th Standard Examination in 1993 could have had their chance to such further courses in 1995 if they had continued their studies and passed the 12th Standard Examination at the first attempt in 1995. By deviating after the 10th Standard Examination and by not pursuing his studies further, the petitioner had lost his chance, which he would have got if he had continued his studies and passed the 12th Standard Examination at the first attempt in 1995. The students who passed the SSC (10th Standard) Examination in June, 1995 and continued their studies and passed 12th Standard Examination at the first attempt in 1997 were to get their chance for the higher studies for the first time, and recognising this aspect of continuity of studies immediately preceding the year of commencement of the course and the fact that this group was to get their first chance and also keeping in view the limited number of seats available for the said course, if the University has prescribed the above

eligibility criteria, it can never be said that it has acted irrationally or arbitrarily.

The decision in *Nirish Shah's* case (*supra*) cannot in any manner assist the petitioner, because that decision was given in context of Rule 18 of the Admission Rules, which provided for deduction from the marks taken into consideration for preparation of the merit list for admission to the course and had no bearing on the aspect of eligibility on the ground of passing the qualifying examinations in continuity and at the first attempt. Relying upon the decision of the Supreme Court in *Abhijit Vs. Dean, Government Medical College, Aurangbad* - AIR 1987 S.C 1362, it was held that the students who had not kept their terms nor filled-in any forms for the examination, could not be considered to be students who were due for the examination under Rule 18 and therefore, in their case the marks could not be deducted. It was held that if such deduction was to be allowed to be made under Rule 18 by treating those who were not due for examination as due, that would render the Rule irrational, unreasonable and arbitrary. In the present case, no question arises of considering the student to be due or not for the qualifying examination. The question that arises is entirely different and is as to whether the requirement of eligibility regarding continuity of passing in the qualifying examinations of the 10th and 12th Standards, immediately preceding the admission year can be said to be unreasonable or arbitrary. Therefore, the decision in *Nirish Shah's* case cannot assist the petitioner.

In *Jayesh Joshipura Vs. State*, reported in 25(2) GLR 761, it was in terms held that if the executive in exercise of its powers makes a policy decision to restrict entry of students to the Medical courses in the given year by putting upper limit to the number of qualifying examinations, which can be taken into consideration for drafting students to medical courses starting year after year, it cannot be said that such a policy decision is unreasonable or that classification or sub-classification effected thereby is irrational. It was held that looking to the number of seats available in the given year and keeping in mind the fact that the students passing the qualifying examination in earlier years had already exhausted their chance for being considered for admission and had lost in the contest in view of their lower merits reflected by their marks, if they are excluded from future contest, it cannot be said that such exclusion made by the executive is unreasonable from any point of view. Thus, sub-classification, of

students otherwise similarly situated, from a broad point of view as all of them had passed the qualifying examination, was held to be not unreasonable. It was further held that if the executive bonafide takes a policy decision to remove from contest those students who had passed the qualifying examination in remote past and who had already their opportunity to be considered for admission to the medical courses started in past years and who were elbowed out of contest because of their low merits and more meritorious students got admitted in the past years' courses, if such students are not again given second or third opportunity or even more and if fresh students who had recently passed their qualifying examination and who were not being elbowed out on merits by any one for the purpose of admission to the relevant medical courses, starting in the given year, it cannot be said that adoption of this yard-stick has no nexus to the object sought to be achieved. Thus, the policy of limiting the area of choice to only those students who had passed the qualifying examination in the current year or one qualifying examination immediately preceding the current year, was held to be valid as it had a rational nexus to the object sought to be achieved namely to attract best talent for medical courses. The ratio of this decision has been referred to in Nirish Shah's case (supra) in paragraph 15 of the judgement by stating that the said decision upheld the classification of students in two categories for the purpose of admission namely students passing qualifying examination within the permissible limits and those passing beyond permissible limits as based on intelligible differentia and having rational nexus to the object sought to be achieved by such classification. It is significant to note that having referred to the ratio of the decision in Joshipura's case, there is nothing said in Nirish Shah's case which can deviate from the said ratio.

Thus, the criteria for laying down the eligibility for admission namely that there should be continuity in passing the 10th Standard and 12th Standard examinations held immediately prior to the admission to the M.B.A course cannot be said to be irrational or arbitrary and the rejection of the petitioner's admission form on the ground that he was not eligible as per the said criteria was therefore justified. The petition is therefore, rejected. Notice is discharged with no order as to costs.

* /Mohandas